

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
AUGUST 24, 2009**

Mayor David W. Samuelson declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Councilmember V. L. Wiley, Jr. led the opening devotion and then Mayor David W. Samuelson led the pledge of allegiance.

Councilmembers present were: Mayor David W. Samuelson, Councilmembers V. L. Wiley, Jr., Lewis Fortenberry, Jr., Terry David Lynch, Don Mueller, and Jeff Gubbels.

Councilmember absent was: Councilmember Domingo Montalvo, Jr.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Olmeda, Assistant to City Manager Jackie Jansky, Public Works Director Carter Miska, EMS Director John Kowalik, and City Attorney Paul Webb.

Visitors present were: Barry Halvorson with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Carlos Cotton with Jones & Carter, Peggy Christman, Jim Gilley, Christian Galvin, Ruiel Taylor, Reverend Thomas Ousley, Helen Wright, Mozelle Stephens, and Lance Ousley.

The second item on the agenda was Roll Call and Excused Absences. Councilmember Don Mueller made a motion to excuse the absence of Councilmember Domingo Montalvo, Jr. from the regular City Council meeting held August 24, 2009. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. No comments were given. No action was taken.

The fourth item on the agenda was Wharton Moment. No comments were given. No action was taken.

The fifth item on the agenda was to review and consider the City of Wharton Financial Report for the month of July 2009. Finance Director Joyce Vasut presented the financial report for the month of July 2009, which was at 83% or ten months into the fiscal year. Mrs. Vasut stated that the general fund revenues were at 84.70 % and the expenditures were at 84.04%. The total ad valorem taxes collected were \$1,899,523. She said the sales tax for the month of June was \$164,552 with \$ 109,701 to the City and \$54,851 to WEDC. The bank balance for July was

\$1,124,864.00 with an average monthly yield of 0.25%. Other investments included: Capital One Marketing \$251,320.56 with 2.0% interest and TexasGulf Federal Credit Union 6 month CD \$241,157.69 with 1.89% interest. She said that TexPool balance for July was \$156,249.19 with an average monthly yield of 0.3384%. After some discussion, Councilmember Don Mueller made a motion to approve the City of Wharton Financial Report for the month of July 2009. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the City Manager's submission of the City of Wharton, Texas, proposed budget for the fiscal year October 1, 2009 to September 30, 2010. City Manager Andres Garza, Jr. stated that under separate cover, on Monday, August 24, 2009, a copy of the proposed budget for the City of Wharton fiscal year October 1, 2009 to September 30, 2010 was presented. He stated that the budget included a proposed tax rate of \$0.04 less than the effective tax rate. Councilmember Jeff Gubbels stated that the budget was balanced but did not fulfill all requests from the city departments. After some discussion, no action was taken.

The seventh item on the agenda was to review and consider setting a public hearing date for the City of Wharton, Texas, proposed budget for the fiscal year October 1, 2009 to September 30, 2010. City Manager Andres Garza, Jr. stated that under Article VI, Section 53 of the City of Wharton Charter, the City Council shall set a time and place for a public hearing. He then presented a copy of the City's Charter Section pertaining to the Budget. He said that the City Staff would publish the Notice of Public Hearing on Wednesday, September 2, 2009 in the Wharton Journal Spectator. He stated that he recommended the public hearing be set for the September 14, 2009 regular City Council meeting, which the date would comply with Section 53 of the Charter. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve setting a public hearing date for the City of Wharton, Texas, proposed budget for the fiscal year October 1, 2009 to September 30, 2010 on September 14, 2009. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider an ordinance authorizing the issuance of City of Wharton Texas, Limited Tax Refunding Bonds, Series 2009; and other Matter Related Thereto. City Manager Andres Garza, Jr. stated that during the July 31, 2009 City Council Finance Committee meeting, the Finance Committee voted to recommend the City Council approved to refinance the \$300,000 loan with Houston Community Bank by issuing 2009 refund tax bonds. He stated that this would allow the City to repay the debt over a period of five years. He then presented a draft ordinance authorizing the issuance of City of Wharton, Texas, Limited Tax Refunding Bonds Series 2009. Finance Director presented the Summary of Sale information. Mr. Jim Gilley with Coastal Securities addressed the City Council and stated that the interest rate was 4.65%. He stated that the City could recall the bonds at any time. Ms. Peggy Christman with Vinson & Elkins was also present. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve Ordinance No. 2009-05, which read as follows:

CITY OF WHARTON
ORDINANCE NO. 2009-05

ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF WHARTON,
TEXAS, LIMITED TAX REFUNDING BONDS, SERIES 2009; AND OTHER
MATTERS RELATED THERETO

THE STATE OF TEXAS §
COUNTY OF WHARTON §
CITY OF WHARTON §

WHEREAS, the City Council of the City of Wharton, Texas (the “City”) has heretofore issued its Tax Anticipation Notes, Series 2008; and

WHEREAS, the City desires to refund a portion of said notes (the “Refunded Notes”) in advance of their maturities; and

WHEREAS, Chapter 1207, Texas Government Code (the “Act”), authorizes the City to issue refunding bonds for the purpose of refunding the Refunded Notes in advance of their maturities, and to accomplish such refunding by depositing directly with a paying agent for the Refunded Notes, the proceeds of such refunding bonds, together with other available funds, in an amount sufficient to provide for the payment or redemption of the Refunded Notes, and provides that such deposit shall constitute the making of firm banking and financial arrangements for the discharge and final payment or redemption of the Refunded Notes; and

WHEREAS, upon the issuance of the refunding bonds herein authorized and the deposit of funds referred to above, the Refunded Notes shall no longer be regarded as being outstanding, except for the purpose of being paid pursuant to such deposit, and the pledges, liens, trusts and all other covenants, provisions, terms and conditions of the ordinance authorizing the issuance of the Refunded Notes shall be, with respect to the Refunded Notes, discharged, terminated and defeased; Now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHARTON:

1. Recitals; Consideration. It is hereby found and determined that the matters and facts set out in the preamble to this Ordinance are true and correct.

It is hereby found and determined that the refunding contemplated in this Ordinance will benefit the City by providing a total savings of \$24,055.65, and a present value savings of \$12,240.30 in the debt service payable by the City, that such benefit is sufficient consideration for the refunding of the Refunded Notes, and that the issuance of the refunding bonds is in the best interests of the City.

2. Definitions. Throughout this Ordinance the following terms and expressions as used herein shall have the meanings set forth below:

“Bonds” mean the City of Wharton, Texas, Limited Tax Refunding Bonds, Series 2009 authorized in this Ordinance, unless the context clearly indicates otherwise.

“Business Day” means any day which is not a Saturday, Sunday, or a day on which the Registrar is authorized by law or executive order to close.

“City” means the City of Wharton, Texas.

“Comptroller” means the Comptroller of Public Accounts of the State of Texas.

“Initial Bond” means the Initial Bond authorized by Section 6(d).

“Interest and Sinking Fund” means the interest and sinking fund for payment of the Bonds established by the City in Section 17 of this Ordinance.

“Interest Payment Date”, when used in connection with any Bond, means June 1, 2010, and each December 1 and June 1 thereafter until maturity or earlier redemption.

“Investment Letter” means the letter between the City and the Purchaser described in Section 19 of this Ordinance.

“Issuance Date” means the date on which the Bonds are delivered to and paid for by the Purchaser.

“Ordinance” as used herein and in the Bonds means this ordinance authorizing the Bonds.

“Owner” means any person who shall be the registered owner of any outstanding Bond.

“Purchaser” means Houston Community Bank, N.A.

“Record Date” means, with respect to the Bonds, the fifteenth day of the month preceding such Interest Payment Date.

“Refunded Notes” mean the City’s Tax Anticipation Notes, Series 2008, in the aggregate principal amount of \$300,000, maturing on September 30, 2009.

“Register” means the books of registration kept by the Registrar, in which are maintained the names and addresses of, and the principal amounts of the Bonds registered to, each Owner.

“Registrar” means Houston Community Bank, N.A., and its successors in that capacity.

3. Authorization. The Bonds shall be issued in fully registered form in the aggregate principal amount \$300,00 for the purpose of refunding the Refunded Notes, under and in strict conformity with the Constitution and laws of the State of Texas, particularly Chapter 1207, Texas Government Code, as amended.

4. Designation and Date. The Bonds shall be designated as “CITY OF WHARTON, TEXAS, LIMITED TAX REFUNDING BONDS, SERIES 2009”, and shall be dated September 15, 2009. The Bonds shall bear interest at the rates set forth in Section 5 of this Ordinance from the Issuance Date, or the most recent Interest Payment Date to which such interest has been paid or duly provided for, calculated on the basis of a 360 day year of twelve 30 day months, with such interest payable on each Interest Payment Date.

5. Principal Amounts and Interest Rates; Numbers and Denominations. The Bonds shall be initially issued in the principal amounts, and bearing interest at the rates set forth in the following schedule, and may be transferred and exchanged as set out in this Ordinance. The Bonds shall mature on December 1 in each of the years and in the amounts set out in such schedule. The Initial Bond shall be numbered I-1 and all other Bonds shall be numbered in sequence beginning with R-1. Bonds delivered on transfer of or in exchange for other Bonds shall be numbered in order of their authentication by the Registrar, shall be in the denomination of \$5,000 or integral multiples thereof, and shall mature on the same date and bear interest at the same rate as the Bond or Bonds in lieu of which they are delivered.

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2010	\$60,000	4.650%
2011	55,000	4.650%
2012	60,000	4.650%
2013	60,000	4.650%
2014	65,000	4.650%

6. Execution of Bonds; Seal. (a) The Bonds shall be signed on behalf of the City by the Mayor and countersigned by the City Secretary, by their manual, lithographed, or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(b) If any officer of the City whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the authentication of such Bonds or before the delivery of such Bonds, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Registrar’s Authentication Certificate substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Registrar. In lieu of the executed Registrar’s Authentication Certificate described above, the Initial Bond delivered at the Issuance Date shall have attached hereto the Comptroller’s Registration Certificate substantially in

the form provided herein, manually executed by the Comptroller, or by his duly authorized agent, which certificate shall be evidence that the Initial Bond has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller.

(d) On the Issuance Date, the Initial Bond, being a single bond representing the entire principal amount of the Bonds, payable in stated installments to the Purchaser or its designee, executed by manual or facsimile signature of the Mayor and City Secretary of the City, approved by the Attorney General, and registered and manually signed by the Comptroller, shall be delivered to the Purchaser or its designee. If the Purchaser desires, it may hold the Initial Bond in lieu of holding definitive Bonds.

7. Payment of Principal and Interest. The Registrar is hereby appointed as the paying agent and registrar for the Bonds. The principal of the Bonds shall be payable, without exchange or collection charges, in any coin or currency of the United States of America which, on the date of payment, is legal tender for the payment of debts due the United States of America, upon their presentation and surrender as they respectively become due and payable at the principal payment office of the Registrar in Houston, Texas. The interest on each Bond shall be payable on each Interest Payment Date, by check mailed by the Registrar on or before the Interest Payment Date to the Owner of record as of the Record Date.

If the date for payment of the principal of or interest on any Bond is not a Business Day, then the date for such payment shall be the next succeeding Business Day with the same force and effect as if made on the date payment was originally due.

8. Successor Registrars. The City covenants that at all times while any Bonds are outstanding it will provide a commercial bank or trust company, organized under the laws of the United States or any state, and duly qualified and legally authorized to serve as Registrar for the Bonds. The City reserves the right to change the Registrar on not less than 60 days written notice to the Registrar, so long as any such notice is effective not less than 60 days prior to the next succeeding principal or interest payment date on the Bonds. Promptly upon the appointment of any successor Registrar, the previous Registrar shall deliver the Register or copies thereof to the new Registrar, and the new Registrar shall notify each Owner, by United States mail, first class postage prepaid, of such change and of the address of the new Registrar. Each Registrar hereunder, by acting in that capacity, shall be deemed to have agreed to the provisions of this Section.

9. Special Record Date. If interest on any Bond is not paid on any Interest Payment Date and continues unpaid for thirty (30) days thereafter, the Registrar shall establish a new record date for the payment of such interest, to be known as a Special Record Date. The Registrar shall establish a Special Record Date when funds to make such interest payment are received from or on behalf of the City. Such Special Record Date shall be fifteen (15) days prior to the date fixed for payment of such past due interest, and notice of the date of payment and the Special Record Date shall be sent by United States mail, first class, postage prepaid, not later than

five (5) days prior to the Special Record Date, to each affected Owner of record as of the close of business on the day prior to the mailing of such notice.

10. Ownership; Unclaimed Principal and Interest. The City, the Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment of the principal of or interest on such Bond, and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Registrar shall be bound by any notice or knowledge to the contrary. All payments made to the person deemed to be the Owner of any Bond in accordance with this Section shall be valid and effectual and shall discharge the liability of the City and the Registrar upon such Bond to the extent of the sums paid.

Amounts held by the Registrar which represent principal of and interest on the Bonds remaining unclaimed by the Owner after the expiration of three years from the date such amounts have become due and payable shall be reported and disposed of by the Registrar in accordance with the applicable provisions of Texas law including, to the extent applicable, Title 6 of the Texas Property Code, as amended.

11. Registration, Transfer, and Exchange. So long as any Bonds remain outstanding, the Registrar shall keep the Register at its principal payment office in Houston, Texas, and, subject to such reasonable regulations as it may prescribe, the Registrar shall provide for the registration and transfer of Bonds in accordance with the terms of this Ordinance.

Each Bond shall be transferable only upon the presentation and surrender thereof at the principal payment office of the Registrar in Houston, Texas, duly endorsed for transfer, or accompanied by an assignment duly executed by the registered Owner or his authorized representative in form satisfactory to the Registrar. Upon due presentation of any Bond for transfer, the Registrar shall authenticate and deliver in exchange therefor, within three Business Days after such presentation, a new Bond or Bonds registered in the name of the transferee or transferees, in authorized denominations and of the same maturity and aggregate principal amount and bearing interest at the same rate as the Bond or Bonds so presented.

All Bonds shall be exchangeable upon presentation and surrender thereof at the principal payment office of the Registrar in Houston, Texas, for a Bond or Bonds of like maturity and interest rate and in any authorized denomination, in an aggregate amount equal to the unpaid principal amount of the Bond or Bonds presented for exchange. The Registrar shall be and is hereby authorized to authenticate and deliver exchange Bonds in accordance with the provisions of this Section. Each Bond delivered in accordance with this Section shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such Bond is delivered.

The City or the Registrar may require the Owner of any Bond to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the transfer or exchange of such Bond. Any fee or charge of the Registrar for such transfer or exchange shall be paid by the City.

12. Mutilated, Lost, or Stolen Bonds. Upon the presentation and surrender to the Registrar of a mutilated Bond, the Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like maturity, interest rate, and principal amount, bearing a number not contemporaneously outstanding. If any Bond is lost, apparently destroyed, or wrongfully taken, the City, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authorize and the Registrar shall authenticate and deliver a replacement Bond of like maturity, interest rate and principal amount, bearing a number not contemporaneously outstanding.

The City or the Registrar may require the Owner of a mutilated Bond to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith and any other expenses connected therewith, including the fees and expenses of the Registrar. The City or the Registrar may require the Owner of a lost, apparently destroyed or wrongfully taken Bond, before any replacement Bond is issued, to:

- (1) furnish to the City and the Registrar satisfactory evidence of the ownership of and the circumstances of the loss, destruction or theft of such Bond;
- (2) furnish such security or indemnity as may be required by the Registrar and the City to save them harmless;
- (3) pay all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Registrar and any tax or other governmental charge that may be imposed; and
- (4) meet any other reasonable requirements of the City and the Registrar.

If, after the delivery of such replacement Bond, a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Registrar shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Registrar in connection therewith.

If any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the City in its discretion may, instead of issuing a replacement Bond, authorize the Registrar to pay such Bond.

Each replacement Bond delivered in accordance with this Section shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

13. Cancellation of Bonds. All Bonds paid in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in

